

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	WC Docket No. 01-92
)	

**NUCLA NATURITA TELEPHONE COMPANY REQUEST FOR
WAIVER OF SECTION 54.316**

Pursuant to Section 1.3 of the Commission’s rules, Nucla Naturita Telephone Company (“NNTC”) respectfully requests the Commission waive, to the extent necessary, certain reporting deadlines of Section 54.316 of its rules, such that all qualifying locations to which NNTC has made broadband services available will be counted toward NNTC’s buildout milestones. Specifically, NNTC seeks to supplement and correct previous filings in the High-Cost Universal Service Broadband (“HUBB”) system by (a) uploading location data that should have been uploaded but was not and (b) certifying location data that was uploaded and should have been certified, but was not. USAC permits the supplementation and correction of prior filings with a waiver from the Commission. The requested waiver is appropriate because NNTC has rapidly and diligently deployed broadband meeting the Commission’s requirements; made substantial efforts to comply with the rule each year; and took immediate action to correct the issues once they were identified. Further, denying NNTC’s request would undermine the public interest by

preventing the Commission and USAC from having access to accurate location data and by potentially subjecting NNTC to a reduction in support. These points are discussed in turn below.

I. Factual Background

NNTC was among the 216 rate-of-return companies that elected Alternative Connect America (A-CAM) support in 2016,¹ and accepted the Commission's revised A-CAM offer in January of 2017.² Each year, NNTC has complied with the requirements of Rule 54.316 by uploading and certifying its broadband deployment data in the HUBB, including its pre-existing locations.³ In January of 2021, NNTC began the process to comply with the Commission's speed testing requirements which, among other things, require carriers to upload certified HUBB location data for randomization.⁴ It was during this process that NNTC's management discovered that certain location data had not been uploaded as part of the company's March 1 filings, and that certain data that had been uploaded was not certified.

First, approximately 400 locations deployed in prior years were not included in the relevant March 1 HUBB filings made by NNTC. Based upon a review of its records, it appears that this oversight was caused by a misinterpretation of the Commission's rules; specifically, NNTC's staff initially interpreted the rules to require reporting of only those locations at which customers were actively subscribing to a tier of broadband meeting the Commission's requirements. As a result, NNTC excluded those locations where such broadband services were available, but not actually subscribed to by an active customer.

¹ *Wireline Competition Bureau Announces Results of Rate-Of-Return Carriers*, 31 FCC Rcd 11966 (FCC 2016).

² *Wireline Competition Bureau Authorizes 182 Rate-Of-Return Companies to Receive \$ 54 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, WC Docket No. 10-90, Released January 24, 2017.

³ *Connect America Fund et al.*, 31 FCC Rcd 3087, 3166 (FCC 2016) (*2016 Reform Order*).

⁴ *In re Connect Am. Fund Order* 33 FCC Rcd 6509, 6521 (FCC 2018).

Second, approximately 300 locations uploaded to the HUBB in NNTC's 2019 filing were not certified. Specifically, none of the 276 pre-existing (2016) locations and only 11 of the 17 newly-deployed (2018) locations uploaded were certified. It is unclear to NNTC why some, but not all, of the locations uploaded in its 2019 filing would be certified, as there is no reason NNTC would intentionally leave uploaded data uncertified.

Upon discovering these errors, NNTC immediately reached out to USAC to correct its previous HUBB filings but was informed a waiver would be necessary first. Accordingly, NNTC is filing the instant request for waiver.

II. Grant of the Requested Waiver is Warranted

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown.⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶ In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis.⁷ USAC permits HUBB filers to correct previous filings with a waiver from the Commission,⁸ and the Commission has waived Section 54.316 deadlines where there were issues due to administrative error.⁹

Good cause for granting NNTC's request exists for a number of reasons, as the facts demonstrate that strict compliance with the rule would not be in the public interest. NNTC has

⁵ 47 CFR 1.3.

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁸ *HUBB FAQ* (available at <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HC-HUBB-FAQ.pdf>, last visited February 22, 2021).

⁹ *In re WCB Addresses Several Petitions Requesting Waiver of the HUBS Deadline*, 34 FCC Rcd 11139, (F.C.C. 2019) ("High-Cost Waiver Order").

actually made qualifying service available to a substantial portion of eligible locations, well in advance of the Commission’s milestone requirements. As of this filing, approximately 700 of the 889 eligible locations under NNTC’s Revised A-CAM Offer now have access to broadband service meeting the Commission’s requirements – well ahead of the 136 locations required by the 2021 milestone. NNTC’s error was limited to the reporting of its progress in the HUBB.

The purpose of the HUBB reporting rules is to allow the Commission to track progress toward buildout milestones and generally determine “if universal service funds are being used for their intended purposes.”¹⁰ NNTC also certifies each year with the Colorado Public Utilities Commission that it “is aware of the purpose of the support for the federal high-cost support and it is complying with the requirement set forth by the FCC in 47 U.S.C. § 254(e).”¹¹ It was intended to “enable the Commission and USAC to analyze the data provided by carriers and determine how high-cost support is being used to ‘improve broadband availability, service quality, and capacity at the smallest geographic area possible.’”¹² Not allowing NNTC to supplement and correct its HUBB data to accurately reflect its deployment would therefore undermine the Commission’s very purpose for adopting the reporting requirement in the first place. And, as the majority of locations that remain either un-uploaded or uncertified were part of NNTC’s pre-existing deployment, there is no question as to whether NNTC’s use of A-CAM support was appropriate. In fact, denying NNTC’s waiver would have the perverse effect of preventing NNTC from complying with its milestone deployment certifications, because it has already diligently deployed broadband ahead of schedule.

¹⁰ 2016 Reform Order at 3163.

¹¹ 4 CRR 723-2 Rule 2187.

¹² 2016 Reform Order at 3164.

Nor is a reduction in support, as contemplated by the Commission's rules, in the public interest. The Commission imposes support reductions on late filers "to impress upon high-cost recipients the importance of understanding obligations that come with high-cost funding and the need for the Commission and USAC to receive the data in a timely manner so that we can properly administer the Universal Service Fund."¹³ NNTC's filing history demonstrates that it has always taken the Commission's filing requirements seriously, having always timely uploaded and certified location data, despite certain errors. NNTC seeks only to supplement and correct its HUBB reports to accurately reflect its progress toward completing its buildout obligations.

Finally, considerations of hardship, equity, and the effective implementation of public policy all militate in favor of granting NNTC's request. To the extent NNTC's corrections are considered by the Commission to be late filings, strict compliance with the rules – which prescribe a reduction in support on a pro-rata daily basis equivalent to the period of non-compliance – would result in more than a million dollars of lost support that would otherwise go toward the maintenance and expansion of broadband services.¹⁴ As noted previously, it will be impossible for NNTC to demonstrate compliance with any of the Commission's milestone reports and certifications unless it is allowed to supplement and correct its previous reports. Nor will NNTC be able to comply with the Commission's speed testing requirements, which use randomized certified location data from the HUBB.

NNTC recognizes that, in granting previous waivers of the HUBB filing deadlines, the Commission stated that it "expects ... ETCs are familiar with their reporting requirements and the HUBB interface" and is "unlikely to grant future petitions with similar facts."¹⁵ However, the

¹³ *In re Connect Am. Fund*, 29 FCC Rcd 15644, 15691 (F.C.C. 2014).

¹⁴ NNTC receives approximately \$1.4 million annually in A-CAM support.

¹⁵ *High-Cost Waiver Order* at 11146.

High-Cost Waiver Order was issued months after all but one of NNTC's location data reports (2020's filing, for 2019 deployments). Further, the carriers that received waivers as part of the *High-Cost Waiver Order* received separate notification from USAC of the errors in their filings.¹⁶ While NNTC does not suggest that USAC has an affirmative obligation to notify every single filer of errors in their filings, the fact that NNTC did not discover its errors until after the *High-Cost Waiver Order* petitions were considered and granted should at least be seen as a mitigating factor here.

III. Conclusion

For the forgoing reasons, NNTC submits that good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of NNTC's requested waiver of the deadlines established by Section 54.316(c) of the rules. The requested waiver is consistent with Commission precedent, and is supported by NNTC's timely uploading of the relevant location data; NNTC's prompt efforts to resolve the issue upon recognition; the lack of any indication of significant adverse impact upon the Commission's or USAC's administration of high-cost support for the years in question; and the furtherance of the Commission's broadband deployment goals.

¹⁶ *Id.* at 11141.

Respectfully submitted,

**NUCLA NATURITA TELEPHONE
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Declaration of Darla Joseph

I, Darla Joseph, Assistant Secretary/Treasurer of Nucla Naturita Telephone Company, do hereby declare under penalty of perjury that the forgoing filing was prepared under my direction and supervision, and that the contents of said filing is true and correct to my knowledge, information, and belief.

Executed on this 22nd day of February, 2021

Darla Joseph

Assistant Secretary/Treasurer